

REQUEST FOR RECONSIDERATION

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 1-9 remain pending. Claim 1 is independent. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Claim Objections

Claims 1, 2, 8, and 9 are objected to by the Examiner as allegedly containing typographical errors.

Regarding the Examiner's objection to the word "downstream," Applicants appreciate that the developer flows into concavity 62a through discharge hole 43 when the container main body is rotated. However, the use of the word "downstream" is in relation to the rotation direction of the concavity, not necessarily the flow direction of the developer. See, for example, the rotation direction indicated as R in Figures 9, 18, 20(1), etc. which indicates an upstream and downstream relation for the rotation direction. Applicants direct the Examiner's attention to the description of these Figures in the specification, which recite this relationship in a similar fashion. Applicants submit that the manner in which the claims define the invention is clear and distinct with respect to "a discharge hole being located on a downstream end wall portion in a rotation direction of the concavity," and respectfully request that the objection to the claim be withdrawn.

Regarding claim 8, Applicants note that while claim 1 is directed to a developer container, claim 8 is directed to an image forming apparatus in which the developer container is mounted. Thus, claim 8 further limits claim 1. Applicants respectfully request that the objection to claim 8 be withdrawn.

The remaining objections have been addressed by amendment.

Applied Reference Does Not Qualify As Prior Art Under § 102(b)

Claims 1-3 and 8 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by JP 2004-347961 to Nagahama et al. ("Nagahama"); claims 4-7 and 9 stand rejected under 35

U.S.C. § 103(a) as allegedly being unpatentable over Nagahama. Applicants respectfully submit that Nagahama does not qualify as prior art under § 102(b).

The appropriate test to determine whether a reference qualifies as prior art under 35 U.S.C. § 102(b) is whether the publication or issue date of the reference is more than 1 year prior to the effective filing date of the application. *See MPEP § 706.02(a)(II)(A)*.

The instant application is a § 371 national stage application of international application no. PCT/JP2004/009747, which has an international filing date of July 8, 2004. The effective U.S. filing date of a national stage application under § 371 is the filing date of the international application. *See MPEP § 706.02 and § 1893.03(b)*. Therefore, the effective filing date of the instant application is July 8, 2004, which predates the publication date of the Nagahama reference, December 9, 2004. Accordingly, Nagahama does not qualify as prior art under § 102(b).

In a telephone conference on February 5, 2009, the Examiner agreed that the Nagahama reference does not qualify as prior art.

Applicants respectfully request that the §§ 102(b) and 103(a) rejections in view of Nagahama be withdrawn.

CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Notice of same is earnestly solicited.

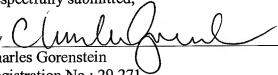
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John R. Sanders, Reg. No. 60,166 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: February 10, 2009

Respectfully submitted,

By



Charles Gorenstein

Registration No.: 29,271

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant